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## I Solar Sharing Scale and Financing

(Continuation from the preceding newsletter)

### 4. Legal Requirements for Solar Sharing

#### (1) Acquisition and Securing of Cropland

As explained in the previous newsletter, “farming-type power generation facilities” refer to facilities, such as those for solar power, that use pillars to suspend essential components above croplands according to a governmental notification issued in March 2013 to clarify a (temporary) cropland diversion permission framework (the “Notification”). “Solar Sharing” can further be defined as efforts to utilize the same space for both solar energy and agricultural production.

Therefore, in order to conduct solar sharing, (of course) business operators need to acquire cropland or secure the right to use cropland. In this regard, an outline of requirements for corporations to acquire cropland and to secure the right to use cropland is as follows.

	When acquiring Cropland (Corporation Qualified to Own Cropland)	When securing the right to use Cropland (Cropland Lease Corporation)
Legal entity requirements	Agricultural producers' cooperative corporation, stock company (limited to non-public), or membership company	No limits
Business requirements	The main business is agriculture (including related businesses)	No limits
Voting requirements	Persons who regularly engage in agricultural business account for a majority of the total voting rights or the number of members	No limits

	When acquiring Cropland (Corporation Qualified to Own Cropland)	When securing the right to use Cropland (Cropland Lease Corporation)
Executive Officer Requirements	(a) Majority of directors and executive partners shall be members who regularly engage in agricultural business. (b) One or more directors, etc., or significant employees shall engage in agricultural work, in principle, for 60 days or more per year.	One or more officers and employees who execute business shall be regularly engaged in cultivation and livestock farming businesses.

In order for a corporation to acquire cropland as described above, the corporation must meet (a) Legal entity requirements, (b) Business requirements, (c) Voting rights requirements, and (d) Executive officer requirements (Article 3, Paragraph 2, Item 2 of the Cropland Law). In order to secure the right of use, it is necessary to secure executive officers who satisfy the requirements of the Cropland Law (Paragraph 3, Item 3 of the same article). Therefore, when a corporation enters into solar sharing, it is necessary to consider how to secure authority over cropland in consideration of the above requirements. It also should be noted that, regardless of which method is considered, it is necessary to secure human resources who are regularly engaged in agriculture/cultivation and livestock farming.<sup>1</sup>

## **(2) Period of temporary diversion**

In order to install solar sharing facilities, permission for temporary cropland diversion is required for the portion of the supporting pillars placed on or into the ground, and the period for such temporary diversion is set at three years, in principle, for a maximum of 10 years. Currently, the lending period for project finance for many solar power generation systems is set at around 20 years, and one of the major challenges for solar sharing in obtaining project finance is that the period of approval for temporary diversion cannot cover the loan period, as explained in the previous newsletter.

In this regard, it seems that engaging in solar sharing may be required to redeem project finance loans at an accelerated rate of 10 years by, for example, increasing their equity relative to ordinary project finance when they receive project financing. However, if all the following requirements are met, the permission for temporary diversion can be obtained again:

- (a) Appropriate continuation of farming is ensured.
- (b) In cases other than the reuse of degraded cropland, the yield on the cropland below the facility has not decreased by more than 20% compared to the average yield of the same crop in the same region in the same year.

<sup>1</sup> Whether or not the main business of the business requirements is "agriculture" is determined based on whether or not the sales of agriculture for the most recent three years preceding the business year including the date of determination account for the majority of the total sales of the business of the corporation in the said three years. In recent years, in relation to solar sharing, amendments have been made to the Regulations for Enforcement of the Cropland Act. It is set forth that "the supply of electricity by the facilities in the case of cultivation under the facilities to convert solar light installed on agricultural land to electricity" is included in "agriculture." In other words, it is sufficient to make up the majority of sales by combining the revenues generated by solar sharing with the revenues from cultivation, etc.

- (c) In the event of the recycling of degraded cropland, the whole or part of the cropland below the facility does not fall under any of the items of Article 32, Paragraph 1 of the Cropland Act.
- (d) There is no significant deterioration in the quality of the produced crops.

If farming is continued appropriately on the cropland below the facility, there seems to be no reasonable reason to revoke the permission for temporary diversion. In fact, there were 779 newly obtained permissions for diversion to install solar sharing facilities in FY 2020. Compared to this, the number of renewed solar sharing facilities was 633 (the total number of applications for renewal is unknown), indicating that a considerable number of renewals have been received. In addition, the number of renewed temporary diversion permissions has risen steadily. Therefore, from the viewpoint of solar sharing operators, it is desirable that investors remain interested in providing loans during the loan period in light of the fact that they will be able to obtain a renewal of the permission for temporary diversion.<sup>2</sup> Further, it also is desirable that new methods to mitigate the risk of temporary diversion permission not being renewed will be considered.

In addition, as explained in the previous item, the period of this temporary diversion permit is up to 10 years in the following cases:

- (a) when the principal farmer uses farmland owned by him or herself or cropland with the right to profit from such usage;
- (b) when restoring and utilizing devastated cropland; and
- (c) when using Class 2 cropland or Class 3 cropland (except for cropland within areas set aside for securing agricultural use).

In FY2020, there were 391 cases in which temporary use permission was granted to satisfy the requirements for the temporary use permission period within 10 years, of which 331 cases fall under case (a) above. Though certified farmers and newly employed farmers qualify as "principal farmers," in order to become certified farmers, it is necessary to obtain the certification of agricultural management improvement plans based on Article 12 of the Promotion of Strengthening of Agricultural Management Infrastructure Act in the areas of municipalities that have formulated a basic concept for the promotion of the strengthening of agricultural management bases with the consent of the prefectural governors. In order to become newly employed farmers, "Youth etc." who intend to engage in agricultural management need to prepare and obtain a plan certification (Article 14-4, Paragraph 1 of the said law).<sup>34</sup>

<sup>2</sup> "Permission for Conversion of Farmland to Solar Power Generation Facilities (Results since FY2011)" <<https://www.maff.go.jp/j/nousin/noukei/totiriyo/attach/pdf/einogata-4.pdf>>

<sup>3</sup> August 2022, State of Establishment of Solar sharing facilities, etc. (as of the end of FY2020) by the Agricultural and Rural Promotion Bureau, Ministry of Agriculture, Forestry and Fisheries, page 8 <<https://www.maff.go.jp/j/nousin/noukei/totiriyo/attach/pdf/einogata-2.pdf>>

<sup>4</sup> Article 4, Paragraph 2 of the Agricultural Management Infrastructure Reinforcement Promotion Act and Articles 1 to 1-3 of the Promotion of Strengthening of Agricultural Management Infrastructure Act stipulate "youth, etc." as follows.

1 Youth

- Age 18 and over and under 45
- 2 Individuals other than youth as defined above who are provided for in the Ordinance of the Ministry of Agriculture, Forestry and Fisheries as having knowledge and skills that can be utilized to become persons engaged in efficient and stable agricultural management.
  - Persons under the age of 65 who fall under any of the following
    - (a) Persons who have been engaged in the management of commercial, industrial and other businesses for at least three years
    - (b) A person who has been engaged for at least three years in research or guidance, education or other services concerning the business management of commerce and industry or other businesses.
    - (c) Persons who have engaged in agriculture or business related to agriculture for at least three years
    - (d) A person who has been engaged in research, guidance, education or other services related to agriculture for at least three years.
    - (e) A person who is found to have knowledge and skills equivalent to or greater than those of the persons listed in the preceding items.

In addition, there is room to consider the legislative settlement of the period for the temporary diversion, as mentioned in the previous newsletter. In particular, the establishment of a system to continuously monitor the appropriate continuation of farming using Agritech may provide a foothold for the revision of the regulations concerning the temporary diversion permit.

### **(3) Yield requirement**

In order to receive a temporary diversion permit, it is necessary to ensure that farming is maintained on cropland under the solar sharing facilities. Specifically, one of guideline is that the farmland yield is not reduced by more than 20% compared to the average yield of the region in the same year. In addition, although, in project financing, one important factor is how to maintain and continue farming during the loan period, there is a possibility that guidance will be given to remove solar sharing facilities if the requirements for yields are not met.

One way to ensure the yield requirement is to enter into (back-up) pharming management agreements with corporates that have expertise in agriculture and solar sharing. This will ensure the stability of the scheme as seen by investors, and in the event of doubt about the agricultural performance of the cropland-holding qualified corporations established by the business operator, it will be possible to entrust some or all the farming to knowledgeable business operators. In FY 2020, 14% of farmers reported that they had difficulties in cropland below solar sharing facilities, of which 71% was due to a decline in yields. In this case, it is reported that the licensor of permit for the diversion of cropland provides guidance for improvement. However, as of FY 2019, there have been no cases in which an order was issued for the removal of facilities.<sup>56</sup>

In addition, there is no restriction in principle on crops grown on cropland below the power generation facilities in relation to the yield requirement. However, careful measures are required in the case of considering cultivating new crops or converting crops that reduce agricultural income.

## **5. Form of solar sharing**

In order to enter into solar sharing, it is necessary to consider a legal scheme that satisfies the above requirements, and to enter into such a scheme requires a complex legal response. In light of this, as detailed in the next newsletter, in order to enter into solar sharing, it is expected that (a) a method using corporate finance that relies on the creditworthiness of large companies in the region and large companies considering corporate PPA will be bifurcated between (b) a method using project finance. These schemes will be described in the next newsletter.

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3 A company whose majority of officers are comprised of persons listed in the preceding two items and who satisfy the requirements prescribed by Ordinance of the Ministry of Agriculture, Forestry and Fisheries

➤ Among the persons listed in item (i) or item (ii) of the same paragraph who are officers of the said company, those who are found to be engaged in agriculture operated by the said company account for the majority of officers of the said juridical person

<sup>5</sup> August 2022 Rural Promotion Bureau, Ministry of Agriculture, Forestry and Fisheries, State of Establishment of Agricultural Solar Photovoltaic Power Generation Facilities (as of the end of FY2020), p. <<https://www.maff.go.jp/j/nousin/noukei/totiriyō/attach/pdf/einogata-2.pdf>> 6

<sup>6</sup> "Situation of Establishment of Solar sharing facilities (As of the End of Fiscal Year 2019)" page 6, Ministry of Agriculture, Forestry and Fisheries, Rural Promotion Bureau

## II Impact on Agritech (corporations) in Recent Legal Amendments

(Continuation from the preceding newsletter)

### 2. Method of Investment in Agritech Companies under the Act on Special Measures for Facilitating Investment in Agriculture, Forestry and Fisheries Corporations, etc

#### (1) Background to the enactment of the revised Investment Facilitation Act (Act on Special Measures for Facilitating Investment in Agriculture, Forestry and Fisheries Corporations, etc.)

The former Investment Facilitation Act (Act on Special Measures for Facilitating Investment in Agricultural Corporations) stipulated that the Japan Finance Corporation and private financial institutions may invest in agricultural corporations through investment companies and funds approved by the Minister of Agriculture, Forestry and Fisheries in order to encourage investment in farmers who have difficulty receiving external investment due to the risks of unseasonable weather and prolonged production activities. On the other hand, in the fields of agriculture, forestry, and fisheries and the food industry, in view of the fact that there is a demand for funds to respond to new movements such as the development of production bases and facilities for exports and the improvement of productivity by smart agriculture, forestry, and fisheries, the amended Investment Facilitation Act ("**Act**") has expanded the scope of investment to not only agricultural corporations but also companies that "develop or provide technology to support the rationalization, upgrading, or other improvement of businesses in the agriculture, forestry, and fisheries industries" (Article 1, Paragraph 1 of the Ordinance for Enforcement of the Act and Article 2, Paragraph 5 of the Act). In other words, this amendment has expanded the scope of investment to companies that develop smart agriculture techniques using AI and robotics.

#### (2) Investment in Agritech Companies under the Revised Investment Facilitation Act

A Kabushiki-Kaisha or an investment limited partnership considering making an investment in Agritech companies may prepare a plan (hereinafter referred to as a "Business plan") concerning the investment and development business (*Toshiikusei Jigyo*) of the said Agritech company pursuant to the provisions of the Ordinance of the Ministry of Agriculture, Forestry and Fisheries and submit the plan to the Minister of Agriculture, Forestry and Fisheries for approval to the effect that the Business plan is appropriate (Article 3(1) of the Act). Approved Kabushiki-Kaishas or investment limited partnerships are entitled to receive investment from the Japan Finance Corporation of the funds necessary to carry out the investment and development business of the Agritech company (Article 8, Paragraph 1 of the Act). In other words, it is possible for the approved Kabushiki-Kaisha and investment limited partnership to invest in Agritech companies with the investment risk diversified by receiving investment from Japan Finance Corporation.

### 3. Guidelines for Ensuring Safety in the Self-Driving of Agricultural Machinery (partially revised in March 2022)<sup>7</sup>

Smart agriculture is progressing gradually through the Cross-ministerial Strategic Innovation Promotion Program "Technologies for Creating Next-generation Agriculture, Forestry and Fisheries" and the promotion of the Agricultural Data Collaboration Platform WAGRI and the on-farm demonstration trials of smart agriculture. On the other hand, the issues of smart agriculture have also been highlighted, such as (i) the high initial cost

<sup>7</sup> <https://www.maff.go.jp/j/kanbo/smart/attach/pdf/index-11.pdf>

of the introduction of smart agriculture technologies, (ii) the lack of collaboration between agricultural data and the lack of effective use of data in agricultural management, and (iii) the necessity of revising regulations and systems in response to technological developments. In order to respond flexibly to the challenges that arise from the advancement of smart agriculture technologies, guidelines that are not legally binding and easy to revise are rapidly being developed.<sup>8,9,10</sup>

For example, the "Guidelines for the Standardization of Labeling of Information Provided by Agricultural Support Service Providers" are intended to address issue (i) above by providing a policy on the information to be displayed by service providers (e.g., service contents, fees, options, procedures, etc.), and creating an environment in which farmers can appropriately select and use agricultural support service providers. In response to issue (ii), the "Guidelines for the development of a system (open API) ver1.0" was established for data linkage across corporate and system boundaries for data obtained from agricultural machinery and other materials used by farmers. In addition, regarding issues (iii), the "Guidelines for Ensuring Safety in the Self-Driving of Agricultural Machinery", "Guidelines for the Improvement of Cropland in Response to Self-Driving Agricultural Machinery", and "Safety Guidelines for the Aerial Spraying of Agricultural Chemicals by Unmanned Helicopters" were established one after another. The regulations and systems for promoting the use of automated driving robots and agricultural drones are being reviewed.<sup>11,12,13,14,15</sup>

Although the guidelines are not legally binding, compliance with the guidelines, makes it easier to receive support for smart agriculture such as the requirement for subsidized expenses. In addition, it is expected that there will be an impact on tax incentives in the future.<sup>16</sup>

This article features the "Guidelines for Ensuring Safety in the Self-Driving of Agricultural Machinery" (hereinafter referred to as the "Guidelines").

## (1) Outline and Scope of the Guidelines

The guidelines are intended to ensure the safety of vehicle-type agricultural machinery that automatically runs or works by incorporating robotics technology. They are applied to self-propelled agricultural machinery for tea garden management as well as satellite guided: tractors, rice transplanters, self-propelled mowers, and self-propelled compact general-purpose bogies. The guidelines are characterized by two parts: common

<sup>8</sup> [https://www.naro.go.jp/laboratory/brain/sip/files/sip\\_pamphlet.pdf](https://www.naro.go.jp/laboratory/brain/sip/files/sip_pamphlet.pdf)

<sup>9</sup> <https://www.maff.go.jp/j/kanbo/smart/forum/R2smaforum/oudan/seika85.html>

<sup>10</sup> [https://www.affrc.maff.go.jp/docs/smart\\_agri\\_pro/smart\\_agri\\_pro.htm](https://www.affrc.maff.go.jp/docs/smart_agri_pro/smart_agri_pro.htm)

<sup>11</sup> <https://www.maff.go.jp/j/press/seisan/sizai/210326.html>

<sup>12</sup> <https://www.maff.go.jp/j/kanbo/smart/attach/pdf/openapi-16.pdf>

<sup>13</sup> <https://www.maff.go.jp/j/kanbo/smart/attach/pdf/index-11.pdf>

<sup>14</sup> <https://www.maff.go.jp/j/nousin/noukan/tyotei/kizyun/attach/tebiki.html>

<sup>15</sup> [https://www.maff.go.jp/j/syouan/syokubo/boujyo/attach/pdf/120507\\_heri\\_mujin-129.pdf](https://www.maff.go.jp/j/syouan/syokubo/boujyo/attach/pdf/120507_heri_mujin-129.pdf)

<sup>16</sup> According to the "Implementation Guidelines for the Project to Support the Introduction of Smart Agriculture for Nationwide Development" (partially revised on July 4, 2022), the following requirements are to be satisfied for the machinery expenses to be covered by the subsidy; when the provider of the system services accompanying the machinery to be introduced in the project intends to acquire data, which are covered by the Guidelines for AI and Data Contracts in Agriculture (formulated by the Ministry of Agriculture, Forestry and Fisheries in March 2020), the project proponent (in the case of a loan to a person other than the project implementer, the person to whom the loan is extended or, in the case of a consortium, the members of the consortium) shall conclude an agreement for the storage of such data in accordance with the guidelines.



requirements for all agricultural machinery listed above and additional requirements for each type of agricultural machinery.

The guidelines will be revised as necessary in the future based on the use of robot technology in agriculture, the progress of safety technology, and the development status of new agricultural machinery.

## **(2) Common Points**

### **(i) Principle of Safety Assurance**

Goals are set to prevent serious accidents, such as fatalities, related to the use of robotic agricultural machinery, etc., and to reduce the frequency of other accidents as much as possible. In addition, the method of risk assessment of robotic agricultural machinery, planning of protective measures based on the results, and repeated verification of the effectiveness of risk reduction are presented as a method, as well as the concept of multiple safety.<sup>17,18</sup>

### **(ii) Conditions of use**

As a condition of use, the user must be a person who has received training provided by the manufacturer or seller in the use of the robotic agricultural machinery and who has fully understood the information on use provided by the manufacturers, sellers, or introducers. In addition, the following conditions are listed for use: automatic operation of robotic agricultural machinery only for a specified purpose and place; warning signs to prevent the intrusion of a third party in a field; and prohibition of automatic operation in an environment where it is difficult for the user to monitor the robotic agricultural machinery due to poor visibility such as heavy rainfall or the presence of obstacles.

### **(iii) Efforts by Relevant Parties to Ensure Safety**

The matters to be addressed by the concerned parties to ensure safety are specified in detail by each type of the concerned parties, such as manufacturers, sellers, introducers, users, etc., in terms of risk reduction and identification measures, provision of information, safety measures, management, and conditions of use.

## **(3) Additional Requirements by Type of Agricultural Machinery**

The guidelines stipulate the necessary risk assessment and responsibilities for use of each agricultural machinery in addition to the common requirements for each type of tractor, self-propelled agricultural machinery for tea garden management, rice transplanter, self-propelled mower, and self-propelled compact general-purpose bogies.

## **(4) Advantages and Disadvantages of Compliance with Guidelines**

At the present time, there are few advantages to complying with these guidelines, such as preferential tax treatment or support for subsidies. However, it is possible that compliance with these guidelines will be

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<sup>17</sup> See Part 1-2 of the guidelines for the order of risk assessment and protection measures and the details of protection measures.

<sup>18</sup> This means taking multiple and affordable protection measures based on the concept of multiple safety so that accidents can be prevented even if one of the protection measures does not function sufficiently.

considered when determining whether there is a breach of duty of care or safety when using robotic agricultural machinery on premises.

In the following newsletter, we will continue to introduce the regulations surrounding Agritech fields.

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